Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

HORACE GRANT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fifth District Court of Appeal, State of Florida, improperly construed the Florida Immunity Statute, § 914.04, Florida Statutes (2001), as co-extensive with Mr. Grant's Fifth Amendment privilege against self-incrimination where that statute does not expressly provide derivative use immunity?

2. Whether the Florida Immunity Statute, § 914.04, Florida Statutes (2001), is co-extensive with an individual's Fifth Amendment privilege against self-incrimination?

PARTIES BELOW

Horace Grant, Petitioner

State of Florida, Respondent

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HORACE GRANT petitions for a Writ of Certiorari to review the decision of the Fifth District Court of Appeal, State of Florida, in this case.

OPINION BELOW

The decision of the Fifth District Court of Appeal, State of Florida (App. 5a-11a), is reported at 832 So.2d 770. The order of the Supreme Court of Florida denying discretionary review (App. 1a-2a) is reported at 835 So.2d 266 (Table).

JURISDICTION

The Fifth District Court of Appeal, State of Florida, denied Mr. Grant's petition for writ of certiorari from a Florida circuit court order granting the State of Florida's motion to compel him to answer questions in a criminal deposition, and imposing sanctions (App. 5a-11a). A timely motion for rehearing was denied on May 17, 2002 (App. 3a). The Supreme Court of Florida denied discretionary review by order dated December 10, 2002 (App. 1a-2a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment, United States Constitution:

> No person . . . shall be compelled in any criminal case to be a witness against himself, ...

Fourteenth Amendment, § 1, United States Constitution:

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . .

STATUTE INVOLVED

Section 914.04, Florida Statutes (2001):

Witnesses; person not excused from testifying or producing evidence in certain prosecutions on ground testimony might incriminate him or her; use of testimony given or evidence produced. – No person who has been duly served with a subpoena or subpoena duces tecum shall be excused from attending and testifying or producing any book, paper, or other document before any court having felony trial jurisdiction, grand jury, or state attorney upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to convict him or her of a crime or to subject him or her to a penalty or forfeiture, **but no testimony so given or evidence so produced shall be received against the person upon any criminal investigation or proceeding.** Such testimony

or evidence, however, may be received against the person upon any criminal investigation or proceeding for perjury committed while giving such testimony or producing such evidence or for any perjury subsequently committed. (Emphasis added.)

STATEMENT OF THE CASE

I. HISTORICAL BACKGROUND

The Petitioner, **HORACE GRANT**, is a resident of Orange County, Florida. For a number of years, two Rachel's night clubs operated in Central Florida – one in Casselberry, Seminole County, Florida, and the other in Orlando, Orange County, Florida.

Since at least 1999, the State of Florida, through both the Office of the Statewide Prosecution and the Office of the State Attorney, Ninth Judicial Circuit, has been investigating the Rachel's night clubs, and their owners, managers, and employees, for various criminal acts.

In State of Florida v. Paul James Veigle, et al., Circuit Court, Ninth Judicial Circuit, Orange County, Florida, Case No. CR01-4044, the Office of the Statewide Prosecution has charged Mr. Veigle with numerous crimes, including racketeering, arising out of his ownership and management of the Rachel's night clubs. Also named as defendants are several corporations (App. 49a-55a).

The criminal information filed in the Veigle case alleges that Mr. Grant was involved in certain predicate acts which serve as a basis for the racketeering charge (App. 54a-

55a). Mr. Grant is not a named defendant in the Veigle case (App. 49a), and has no criminal charges pending against him.

Mr. Grant was served with a pre-trial discovery deposition subpoena (App. 43a-45a) and notice of taking his deposition (App. 40a-42a) in the pending Veigle criminal case by an Assistant Statewide Prosecutor, ultimately setting his deposition for November 8, 2001, in the Office of Statewide Prosecution at Orlando, Florida. Mr. Grant appeared at this time and place in accordance with the command contained within this deposition subpoena and the notice of taking his deposition (App. 25a-26a).

On November 8, 2001, an Assistant Statewide Prosecutor, pursuant to this subpoena, took the deposition of Mr. Grant (App. 25a-39a). At that deposition, Mr. Grant declined to answer certain questions, upon advice of counsel, based on his privilege against self-incrimination guaranteed by both the Florida and United States Constitutions (App. 30a-37a). Article I, § 9, Florida Constitution; Amendments V, XIV, United States Constitution.

The questions asked Mr. Grant by legal counsel for the state at this deposition related to Mr. Grant's actions involving Rachel's night clubs and its owners, managers, and employees, including the defendant, Mr. Veigle (App. 32a-37a). These questions triggered Mr. Grant's privilege against self-incrimination. This legal protection has not been waived.

II. PROCEEDINGS IN THE FLORIDA CIRCUIT COURT

Following that refusal, on November 9, 2001, the state filed a motion to compel Mr. Grant to answer the questions (App. 17a-24a). The circuit court held a hearing on

the state's motion to compel on November 30, 2001, at which the court heard argument of counsel. No testimony or tangible exhibits were taken.

On November 30, 2001, the circuit court orally granted this motion to compel and on December 7, 2001, entered its written Amended Order granting the state's motion to compel (App. 12a-16a). The trial court ruled:

> The legislature clearly intended that a statewide prosecutor have any power granted to a state attorney. The Court finds that one such power is the power to hold proceedings which trigger the immunity provisions of Section 914.04. As such, Mr. Grant was automatically extended immunity under that section when he was subpoenaed for deposition.

(App. 14a.) The circuit court went on to order Mr. Grant to answer truthfully and fully all questions of the state and defense (App. 15a). The circuit court further found that Mr. Grant's refusal to answer questions at the scheduled deposition had frustrated the ends of justice, and caused the state and defense to incur costs (App. 15a). It required him to pay "reasonable expenses," including the cost of a court reporter of $54.40 (App. 15a).

III. FLORIDA FIFTH DISTRICT COURT OF APPEAL DECISION

Mr. Grant filed a Petition for Writ of Certiorari to the Florida Fifth District Court of Appeal, asserting that the circuit court's decision departed from the essential requirements of the law.

On March 28, 2002, the Fifth District entered an opinion denying the Petition for Writ of Certiorari (App. 5a-11a). The Fifth District ruled that § 914.04 must be liberally construed (App. 9a-10a). It ruled that § 914.04 does apply in a criminal deposition and does provide the Office of Statewide Prosecution the authority to grant immunity (App. 10a). In a footnote, the Fifth District stated:

> . . . , section 914.04 immunity from use and derivative use "is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of the privilege." Kastigar v. United States, 406 U.S. 441, 453 (1972).

(App. 9a.)

Mr. Grant filed a Motion for Rehearing, Rehearing En Banc, or Certification to the Supreme Court of Florida. The Fifth District denied that motion by order dated May 17, 2002 (App. 3a).

IV. PROCEEDINGS IN THE SUPREME COURT OF FLORIDA

On May 22, 2002, Mr. Grant filed a Notice to Invoke the Discretionary Jurisdiction of the Supreme Court of Florida. Following the filing of briefs on jurisdiction by Mr. Grant and the state, the Supreme Court entered an order declining to accept jurisdiction on December 10, 2002 (App. 1a-2a).

REASONS FOR GRANTING THE WRIT

I. THE FIFTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA, IMPROPERLY CONSTRUED THE FLORIDA IMMUNITY STATUTE, § 914.04, FLORIDA STATUTES (2001), AS CO-EXTENSIVE WITH MR. GRANT'S FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION WHERE THAT STATUTE DOES NOT EXPRESSLY PROVIDE DERIVATIVE USE IMMUNITY

The basic issue in this proceeding is the correctness of Mr. Grant's invocation of his federal privilege against self-incrimination at his deposition. The Fifth District Court of Appeal's decision cannot be squared with this Court's case law surrounding the federal privilege against self-incrimination. This decision essentially ignores the fundamental importance, both historical and personal, of the privilege against self-incrimination in favor of a facile judicial rewriting of the Florida immunity statute. This Court must accept this case for review so that the correct, long-standing constitutional principles can be applied to Mr. Grant.

An individual has a federal constitutional privilege against self-incrimination. Amendments V, XIV, United States Constitution. This privilege is one of the most fundamental in our criminal justice system. As Chief Justice Warren stated in Quinn v. United States, 349 U. S. 155 (1955):

> The privilege against self-incrimination is a right that was hard-earned by our

> forefathers. The reasons for its inclusion in the Constitution - and the necessities for its preservation - are to be found in the lessons of history.

Id. at 161 (footnote omitted). Others have similarly expounded on its historical and personal importance.

> The privilege against self-incrimination is a specific provision of which it is peculiarly true that "a page of history is worth a volume of logic."

Ullmann v. United States, 350 U. S. 422, 438 (1956)(Frankfurter, J.).

> [T]he American system of criminal prosecution is accusatorial, not inquisitorial, and . . . the Fifth Amendment privilege is its essential mainstay.

Malloy v. Hogan, 378 U. S. 1, 7 (1964)(Brennan, J.).

This privilege against self-incrimination has evolved as a protection for an individual from being compelled to give testimony where the answers to questions might be incriminating.

In the instant case, the criminal information filed by the Office of Statewide Prosecution in State v. Paul James Veigle, etc., alleges Mr. Grant's involvement in certain "predicate acts," i.e., acts which the state alleges are criminal in support of its racketeering charge. It is obvious that Mr. Grant possesses a privilege not to answer questions concerning his involvement with the Rachel's clubs and their

owners, managers, and employees, including the criminal defendants in the Veigle case.

Following the invocation of the privilege against self-incrimination, a trial court determines the propriety and good faith of the invocation. The privilege against self-incrimination is to be liberally construed and may be evoked where the witness has a reasonable cause to apprehend danger from a direct answer. The trial court determines whether the responses to the questions posed will potentially implicate the party asserting the privilege. When a trial court is presented with such a contention, it must exercise its discretion and determine whether it is reasonably possible that the answers could evoke a response which could furnish a link in the chain of evidence which might lead to criminal prosecution. Hoffman v. United States, 341 U.S. 479, 486 (1951). A witness cannot be asked to explain how an answer would incriminate him. Malloy v. Hogan, 378 U. S. 1, 11 (1964). To deny the privilege, a judge must determine from the question and the context in which it is asked that it is perfectly clear that a truthful answer could not possibility incriminate the witness. Malloy, 378 U. S. at 11-12.

This Court made clear in Kastigar v. United States, 406 U. S. 441 (1972), that an immunity statute (there the federal immunity statute) is constitutional only because the scope of the use and derivative use immunity that it provides is coextensive with the scope of the constitutional privilege against self-incrimination. An immunity statute, such as the federal statute at issue in Kastigar, must supplant the constitutional privilege against self-incrimination by protecting the individual with use and derivative use immunity. An immunity statute must be carefully construed in order to ensure that the individual's privilege against self-incrimination is protected. See e.g., United States v.

Poindexter, 951 F.2d 369 (D.C. Cir.1991), cert. denied, 506 U.S. 1021 (1992); United States v. North, 910 F.2d 843, modified, 920 F.2d 940 (D.C. Cir. 1990), cert. denied, 500 U.S. 941 (1991). The constitutional privilege, not the state's desire for testimony, is paramount.

As this Court stated in New Jersey v. Portash, 440 U.S. 450, 459 (1979):

> Testimony given in response to a grant of legislative immunity is the essence of coerced testimony . . . . [In the case of immunized testimony,] we deal with the constitutional privilege against compulsory self-incrimination in its most pristine form. Balancing, therefore, is not simply unnecessary. It is impermissible.

For nearly 100 years, from Counselman v. Hitchcock, 142 U. S. 547 (1892), to the Kastigar decision in 1972, federal immunity statutes had been repeatedly struck down by this Court because of their failure to explicitly provide derivative use immunity. In Counselman, this Court stated that legislation cannot detract from the privilege accorded by the Constitution, and a mere act of Congress cannot amend the Constitution. 142 U.S. at 564-65. In Counselman the immunity statute provided as follows:

> No pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the

> enforcement of any penalty or forfeiture: provided, that this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying as aforesaid.

142 U.S. at 560-61. In striking down this statute, this Court stated:

> It [the immunity statute] could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.

Id. at 564-65.

In Arndstein v. McCarthy, 254 U.S. 71, petition for reargument denied, 254 U.S. 379 (1920), this Court again struck down an immunity statute on the basis that it did not provide derivative use immunity, based on Counselman. The pertinent part of the immunity statute involved in Arndstein simply provided, "No testimony given by him shall be offered in evidence against him in any criminal proceeding." 254 U.S. at 73. See also McCarthy v. Arndstein, 262 U.S. 355 (1923), on rehearing judgment reaffirmed, 266 U.S. 34 (1924).

In Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965), this Court held that the purported immunity provision did not save the statute from a Fifth Amendment challenge where the statutory grant of immunity was incomplete because it did not "preclude any use" of the information provided "either as evidence or as an investigatory lead." Id. at 80-81. The immunity statute at issue provided, in pertinent part, that:

> The fact of the registration of any person . . . as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

Id. at 80, n.10.

It is important to contrast the federal immunity statute upheld in Kastigar with § 914.04. The statute in Kastigar [the present federal immunity statute] is 18 U.S.C. § 6002. That statute, in pertinent part, provides:

> . . . but no testimony or other information compelled under the order (**or any information directly or indirectly derived from such testimony or other information**) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. (Emphasis added.)

This Court recently re-emphasized, and applied, the federal immunity statute in United States v. Hubbell, 530 U.S. 27 (2000), to preclude prosecution where the use, and derivative use, of documents produced pursuant to an 18 U.S.C. § 6002 immunity order were a basis for the subsequent federal prosecution.

In Counselman, Arndstein, and Albertson, the immunity statutes were all struck down as unconstitutional because they did not expressly provide derivative use immunity. In contrast, the statute in Kastigar, reapplied in Hubbell, does expressly provide derivative use immunity, and is therefore constitutional. The Florida Fifth District Court of Appeal erred in attempting to graft derivative use immunity language onto the Florida immunity statute which, on its face, does not provide derivative use immunity. This case must be accepted for review to bring the Florida law on immunity in accord with this Court's case law on that subject.

II. THE FLORIDA IMMUNITY STATUTE IS UNCONSTITUTIONAL BECAUSE IT IS NOT CO-EXTENSIVE WITH AN INDIVIDUAL'S FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION

The contrast between the federal immunity statute – 18 U.S.C. § 6002 – and the Florida immunity statute – § 914.04 – is obvious. The Florida statute does not have the language included in the parentheses of the federal statute, which explicitly grants derivative use immunity: **"or any information directly or indirectly derived from such testimony or other information."** Such derivative use

immunity cannot be inferred or read into the Florida statute.[1] It is simply not there! The Florida statute is therefore unconstitutional on its face and as applied to Mr. Grant. See Murphy v. Waterfront Commission, 378 U.S. 52 (1964).

The primary reason that the Fifth District Court of Appeal misapplied the federal constitutional law concerning immunity to § 914.04 is the Fifth District's determination that the Florida immunity statute ". . . should be liberally construed to effectuate the purpose for which it is designed." (App. 9a.) As this Court has made clear in each of its cases discussed above, immunity statutes are in derogation of the constitution and therefore must be strictly construed.

Despite these controlling decisions of the United States Supreme Court, the Florida Third District Court of Appeal has held § 914.04 to be constitutional. Novo v. Scott, 438 So.2d 477 (Fla. 3d DCA 1983), review denied, 446 So.2d 100 (Fla. 1984). In Novo, the appellate court simply adopted the trial court's order upholding the statute. By doing so, it ignored the express statutory language of § 914.04, and judicially grafted on language providing derivative use immunity. It could not lawfully do so.[2]

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[1] Florida's statute must be also contrasted with the New Jersey statute upheld in Zicarelli v. New Jersey State Commission, 406 U.S. 472 (1972), a decision issued the same date as Kastigar. The New Jersey statute expressly provides immunity from use of testimony, answers given, or evidence produced, as well as ". . . evidence derived therefrom . . . ." Id. at 475.

[2] In Compton v. Societe Eurosuisse, S.A., 494 F.Supp. 836 (S.D. Fla. 1980), the federal district court struck down a Florida immunity statute, § 56.29, because it failed to provide derivative use immunity. The applicable part of that statute provided, "*An*

In order to understand why Novo was improperly decided, a brief historical review of the Florida immunity statute is helpful.

Prior to 1969, the Florida immunity statute, § 932.29, Fla. Stat., provided transactional immunity, but only for a handful of crimes. The specification of crimes was eliminated in 1969. Ch. 69-316, § 1, Laws of Florida. The statute was renumbered to § 914.04 in 1970, but still provided transactional immunity. Ch. 70-339, § 97, Laws of Florida.

Prior to 1982, § 914.04 read:

> *Witnesses; person not excused from testifying in certain prosecutions on ground testimony might incriminate him; immunity from prosecution.* – No person, having been duly served with a subpoena or subpoena duces tecum, shall be excused from attending and testifying or producing any book, paper, or other document before any court having felony trial jurisdiction, grand jury, or state attorney, upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to

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answer cannot be used as evidence against the person so answering in any criminal proceeding." Id. at 838. There is no real legal distinction between the incomplete, unconstitutional immunity granted in § 56.29(8) in 1980, and that now set forth in § 914.04, Florida Statutes (2001).

> subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Jenny v. State, 447 So.2d 1351, 1352-53 (Fla. 1984), quoting § 914.04, Florida Statutes (1979).

The Supreme Court of Florida specifically addressed the 1979 version of § 914.04 in Jenny.[3] In construing the 1979 immunity statute, the Supreme Court stated "The statute automatically grants use and transactional immunity to one who testifies under the circumstances it delineates." Id. at 1353. The court noted that the statute had been amended in 1982 to delete the provision regarding transactional immunity. Id. What is important to note is that the Supreme Court of Florida in Jenny did not state that the 1979 statute automatically granted use and derivative use immunity to one who testified under the circumstances it delineates.

A comparison between the 1979 statute presented above and the 2001 statute, set forth at pages 2-3 of this

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[3] In DeBock v. State, 512 So.2d 164, 167 (Fla. 1987), cert. denied, 484 U.S. 1025 (Fla. 1988), in passing, the Supreme Court stated that § 914.04, after the 1982 amendment, " . . . now provides for only use and derivative use immunity." This statement was dicta, and there was no further discussion of the topic.

Petition, shows that there are only a few changes – all caused by legislative cutting and pasting.

First, the last clause of the title was changed from "immunity from prosecution" to "use of testimony given or evidence produced."

The phrase "but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise" was stricken.

Finally, the phrase "no testimony so given or produced shall be received against him upon any criminal investigation or proceeding" was amended by adding the words "evidence so" before the word "produced." What is most important, no language providing derivative use immunity was added by the Florida Legislature.

Because the 1979 statute only provided use and transactional immunity according to Jenny, the effect of the 1982 amendment was to eliminate transactional immunity. Since 1982, § 914.04 only provides use immunity; it does not provide derivative use immunity. The Fifth District's conclusion to the contrary was simply wrong.

Because the current Florida immunity statute does not provide derivative use immunity, Mr. Grant has the right to remain silent – a federal constitutional privilege against self-incrimination. Florida's use of this unconstitutional immunity statute collides with the fundamental rights of Mr. Grant guaranteed by the Fifth and Fourteenth Amendments, United States Constitution. The Fifth District's decision is therefore contrary to established federal constitutional law. Because of

the vital importance of the privilege against self-incrimination, and the frequency of the utilization of this unconstitutional immunity statute in Florida, this case provides the opportunity to rectify this unconstitutional injustice.

CONCLUSION

Based on the arguments and authorities cited herein, Mr. Grant's Petition for Writ of Certiorari must be granted and this case must be set for review on the merits.

Respectfully submitted,

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APPENDIX A

SUPREME COURT OF FLORIDA

CASE NO. SC02-1165
Lower Tribunal No.: 5D01-3701

[Filed December 10, 2002]

HORACE GRANT,	)
Petitioner(s)	)
v.	)
STATE OF FLORIDA,	)
Respondent(s)	)
	)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ANSTEAD, C.J., and SHAW, PARIENTE and LEWIS, JJ., concur. WELLS, J., dissents.

A True Copy
Test:

/s/_____
Thomas D. Hall
Clerk, Supreme Court

bh
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HON. ANTHONY H. JOHNSON, JUDGE
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APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

CASE NO. 5D01-3701

[Dated: May 17, 2002]

HORACE GRANT,
Petitioner
v.
STATE OF FLORIDA,
Respondent

BY ORDER OF THE COURT:

ORDERED Petitioner's MOTION FOR REHEARING, REHEARING EN BANC, OR FOR CERTIFICATION TO THE FLORIDA SUPREME COURT, filed April 12, 2002, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.

/s/
FRANK J. HABERSHAW, CLERK

cc: James M. Russ, Esq.
Terrence E. Kehoe, Esq.
Victor L. Chapman, Esq.
Robert Leventhal, Esq.
Harrison T. Slaughter, Esq.
Richard Bogle, Esq.
Warren Lindsey, Esq.
Hon. Anthony Johnson
Office of the Attorney General, Daytona Beach

APPENDIX C

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA FIFTH DISTRICT

CASE NO. 5D01-3701

[Filed March 28, 2002]

HORACE GRANT,	)
Petitioner,	)
v.	)
STATE OF FLORIDA,	)
Respondent.	)
	)

OPINION

ORFINGER, R. B., J.

Horace Grant seeks certiorari review of an amended order compelling him to answer questions for the statewide prosecutor relating to an ongoing criminal investigation. While Grant raises several issues, only one merits discussion.

The Office of the Statewide Prosecutor (OSP) filed an information against Paul James Veigle and Seminole Entertainment, Inc. d/b/a Rachel's World Class Men's Club ("the Rachel's case"), charging various offenses including racketeering and money laundering. The OSP served Grant with a subpoena seeking to take a pretrial discovery deposition concerning the Rachel's case. At the deposition,

the assistant statewide prosecutor attempted to question Grant about his activities and observations at Rachel's. Despite the OSP's assertion that section 914.04, Florida Statutes (2001), conferred use and derivative use immunity on him, Grant refused to answer the questions asserting his right to remain silent under the United States and Florida Constitutions. The State then filed a motion to compel Grant to answer the questions, and for the costs associated with the failed deposition. Grant responded by asserting that section 914.04 does not give the OSP the authority to confer immunity on a witness. The trial court entered an amended order granting the OSP's motion to compel and motion for sanctions, and Grant filed the instant petition seeking certiorari review.

Pursuant to Article V, Section 4(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(b)(3), this court has certiorari jurisdiction to review an order of the circuit court which allegedly invades an individual's privilege against self-incrimination. Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097 (Fla. 1987).

The Fifth Amendment to the United States Constitution provides that "[n]o person shall be compelled in any criminal case to be a witness against himself . . . ." Similarly, Article I, Section 9 of the Florida Constitution provides that "[n]o person shall be . . . compelled in any criminal matter to be a witness against oneself." Of course, the protections provided by the Fifth Amendment and Article I, Section 9 are not implicated if the witness is granted immunity. In Florida, the statute dealing with immunity from criminal prosecution is section 914.04. That statute provides that:

> No person who has been duly served with a subpoena or subpoena duces tecum shall be excused from attending and testifying or producing any book, paper, or other document before any court having felony trial jurisdiction, grand jury, or state attorney upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to convict him or her of a crime or to subject him or her to a penalty or forfeiture, but no testimony so given or evidence so produced shall be received against the person upon any criminal investigation or proceeding. Such testimony or evidence, however, may be received against the person upon any criminal investigation or proceeding for perjury committed while given such testimony or producing such evidence or for any perjury subsequently committed.

(Emphasis added).

Grant contends that the trial court departed from the essential requirements of the law by holding that the OSP is equivalent to a state attorney, and may grant immunity under section 914.04. Grant argues that because immunity is a creature of statute, section 914.04 must be strictly construed. See Randall v. Guenther, 650 So. 2d 1070 (Fla. 5th DCA 1995). In support of his argument, he points out that the immunity statute specifically refers to "any court having

felony trial jurisdiction, grand jury or state attorney," and consequently, the omission of the OSP from the statute must be viewed as a limitation of the statewide prosecutor's ability to grant immunity under the statute.

The State argues that the trial court correctly found that section 16.56(3), Florida Statutes (2001), confers the powers granted to state attorneys on the OSP, and authorizes the OSP to utilize the immunity provisions of section 914.04. We conclude that the trial court correctly held that the immunity provisions of section 914.04 apply when a party is subject to an investigatory subpoena issued by or at the request of the OSP.

Section 914.04 automatically grants use immunity to one who testifies under the circumstances delineated therein. See Jenny v. State, 447 So. 2d 1351 (Fla. 1984).[1] The statute

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[1] It is well-settled that "immunity from prosecution must derive from a specific statutory or constitutional provision." Randall v. Guenther, 650 So. 2d 1070, 1072 (Fla. 5th DCA 1995) (quoting Stancel v. Schultz, 226 So. 2d 456, 459 (Fla. 2d DCA 1969)). See State v. Schroeder, 112 So. 2d 257, 261 (Fla. 1959) ("Immunity from prosecution is a creature of statute")); State v. Polnac, 665 So. 2d 1095 (Fla. 3d DCA 1996); see also 21 Am. Jur. 2d Criminal Law 211 (1981) ("[I]mmunity from prosecution must have its source and sanction in the law. A witness may insist that his immunity have a basis more substantial than the grace or favor of the prosecutor").

A grant of immunity under any statute must be coextensive with that protection under the Fifth Amendment. Murphy v. Waterfront Comm., 378 U.S. 52, 78 (1968). See New Jersey v. Portash, 440 U.S. 450 (1979). Thus, a promise of use immunity is binding and the State is "prohibited from making any such use of

provides that immunity is granted when a person is called before "any court having felony trial jurisdiction, grand jury, or state attorney upon investigation, or trial . . . ." § 914.04, Fla. Stat (2001). While the statute does not specifically include the OSP, section 16.56(3), Florida Statutes (2001), authorizes the OSP to exercise all powers granted by law to state attorneys.

Grant argues that the omission of the OSP from the statute should cause us to conclude that the OSP is without the authority to confer immunity based on the rule of statutory construction expressio unius est exclusio alterius (the expression of one thing excludes things not mentioned). This is not, however, a rule of law; rather, it is an aid to help us determine legislative intent. See 2A Norman J. Singer, Statutes and Statutory Construction, § 47.23, at 318 (6th ed. 2000). The rule will be disregarded when an expanded interpretation of a statute will accomplish beneficial results, where its application would thwart the legislative intent made apparent by the entire act, or serve the purpose for which the statute was enacted. Id. at 324.

The purpose of section 914.04 is to aid the State in the prosecution of crimes. See Fountaine v. State, 460 So. 2d 553, 554 (Fla. 2d DCA 1984). The statute should be liberally construed to effectuate the purpose for which it is designed.

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compelled testimony and its fruits." Murphy, 378 U.S. at 79. (Emphasis supplied). Accordingly, section 914.04 immunity from use and derivative use "is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of the privilege." Kastigar v. United States, 406 U.S. 441, 453 (1972).

See Tsavaris v. Scruggs, 360 So. 2d 745, 749 (Fla. 1977); State v. Schell, 222 So. 2d 757, 758 (Fla. 2d DCA 1969); State v. Buchanan, 207 So. 2d 711, 716 (Fla. 3d DCA 1968). Section 16.56(3) specifically authorizes the OSP to conduct hearings, summon and examine witnesses, require the production of physical evidence, and "confer immunity." The statute further authorizes the statewide prosecutor to "exercise such other powers as by law are granted to state attorneys." § 16.56(3), Fla. Stat. (2001) (Emphasis added).

We observe the basic rule of statutory construction that statutes, which relate to the same or closely related subjects or objects, are regarded as in pari materia, and must be construed together and compared with each other. Ferguson v. State, 377 So. 2d 709, 711 (Fla. 1979); Alachua County v. Powers, 351 So. 2d 32, 40 (Fla. 1977). The doctrine of in pari materia requires courts to construe related statutes together so that they will illuminate each other and are harmonized. Singleton v. Larson, 46 So. 2d 186 (Fla. 1950). This rule requires us to construe sections 914.04 and 16.56(3) together and to harmonize them, if possible. It is clear from reading these statutes in pari materia, with a focus on the legislative purpose and statutory scheme, that a person who is called before the OSP in the course of an investigation is entitled to use immunity. The OSP has been given the same powers as state attorneys. The logical reading of these statutes is that immunity extends whether the investigation is by a state attorney or the OSP. The inclusion of the power to grant immunity to the OSP in section 16.56(3) should be read to include the self-executing use immunity provided for in section 914.04, when the OSP compels a person to testify in a criminal proceeding or investigation.

CERTIORARI DENIED.

PETERSON and PLEUS, JJ., concur.

APPENDIX D

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. CR01-4044
DIVISION 14

[Filed December 11, 2001]

STATE OF FLORIDA,	)
Plaintiff,	)
v.	)
PAUL JAMES VIEGLE,	)
Defendant.	)
	)

AMENDED ORDER GRANTING MOTION TO COMPEL AND MOTION FOR SANCTIONS

This matter came before the Court on the State's Motion to Compel and Motion for Sanctions, dated November 9, 2001. On November 30, 2001, the Court held a hearing on this matter, orally granted the motion, and indicated that a written order would follow. Later that day, the Court signed the State's proposed order. The Court now *sua sponte* vacates that written order, and substitutes the instant order in its place.

The State seeks to compel the testimony of Horace Grant. On November 8, 2001, in response to a subpoena

issued by an assistant statewide prosecutor, Mr. Grant appeared for the State's deposition. However, on the advice of Counsel James M. Russ ("Counsel"), Mr. Grant invoked his privilege against self-incrimination, and refused to answer any material questions. The State argues that, pursuant to the immunity provisions of Section 914.04, Florida Statutes, Mr. Grant's deposition testimony cannot be used in a prosecution against him, and that he is therefore obligated to testify.

Counsel for Mr. Grant argues that Section 914.04 does not apply. It reads in pertinent part as follows:

> No person who has been duly served with a subpoena or subpoena duces tecum shall be excused from attending and testifying or producing any book, paper, or other document before any court having felony trial jurisdiction, grand jury, ***or state attorney*** upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to convict him or her of a crime or to subject him or her to a penalty or forfeiture, but no testimony so given or evidence so produced shall be received against the person upon any criminal investigation or proceeding.

Fla. Stat. §914.04 (2001) (emphasis added).

The instant case is being prosecuted by the Office of Statewide Prosecution. Counsel argues that since the

immunity statute does not refer specifically to proceedings before a statewide prosecutor, it does not apply. This is incorrect.

> The statewide prosecutor may conduct hearings at any place in the state; summon and examine witnesses; require the production of physical evidence; sign informations, indictments, and other official documents; confer immunity; move the court to reduce the sentence of a person convicted of drug trafficking who provides substantial assistance; attend to and serve as the legal adviser to the statewide grand jury; ***and exercise such other powers as by law are granted to state attorneys.*** The statewide prosecutor may designate one or more assistants to exercise any such powers.

Fla. Stat. §16.56(3) (2001) (emphasis added).

It is a basic principle of statutory construction that "[a] law should be construed together with any other law relating to the same purpose such that they are in harmony. Courts should avoid a construction which places in conflict statutes which cover the same general field." City of Boca Raton v. Gidman, 440 So.2d 1277, 1282 (Fla. 1983)(citations omitted). The legislature clearly intended that a statewide prosecutor have any power granted to a state attorney. The Court finds that one such power is the power to hold proceedings which trigger the immunity provisions of Section 914.04. As such, Mr. Grant was automatically extended immunity under that section when he was subpoenaed for deposition. See Jenny v.

State, 447 So. 2d 1351 (Fla. 1984).[1] The Court further finds that Mr. Grant's refusal to answer questions at the scheduled deposition has frustrated the ends of justice, and has caused the State and the Defense to incur unnecessary costs in the instant case.

Therefore, it is hereby **ORDERED AND ADJUDGED**:

1. The State's Motion to Compel and Motion for Sanctions is **GRANTED**. Horace Grant shall appear at the Office of Statewide Prosecution on a reasonable date to be coordinated by that office and Counsel, and he shall truthfully and fully answer all questions of the State and the Defense which are reasonably calculated to lead to admissible evidence in the instant case. No such appearance shall be scheduled before Monday, December 17, 2001, without Mr. Grant's approval.

2. Mr. Grant shall pay the reasonable expenses of the State and the Defense for attending the deposition on November 8, 2001, including the cost of the court reporter of $54.40.

DONE AND ORDERED in Chambers, in Orlando, Orange County, Florida, this 7 day of December 2001.

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[1] Having determined that Section 914.04 applies to proceedings before statewide prosecutors, there is no need for the Court to reach Counsel's additional argument that a statewide prosecutor's power under Section 16.56 to affirmatively "confer immunity" is dependant on the conferee's willingness to accept it.

/s/ _____
ANTHONY JOHNSON
Circuit Court Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been provided via U.S. Mail or hand delivery this 7th day of December 2001, to Richard B. Bogle, Assistant Statewide Prosecutor, 135 West Central Boulevard, Suite 1000, Orlando, FL 32801; James M. Russ, Esq., Tinker Building, 18 West Pine Street, Orlando, FL 32801; Victor L. Chapman, Esq., Barrett, Chapman, & Ruta, P.A., 18 Wall Street, Orlando, FL 32801; Robert Leventhal, Esq., 111 N. Orange Avenue, Suite 700, Orlando, FL 32801; and to Harrison T. Slaughter, Esq., 111 N. Orange Avenue, Suite 700, Orlando, FL 32801.

/s/_____
Judicial Assistant

APPENDIX E

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

COURT CASE NO.: CR01-4044

OSWP CASE NO.: 2001-0132-CFB

[Dated November 9, 2001]

STATE OF FLORIDA
Plaintiff,

v.

(A) PAUL JAMES VEIGLE
a/k/a James Paul Veigle and Jim Veigle,

(B) BEE LINE ENTERTAINMENT PARTNERS, LTD. d/b/a Rachel's World Class Men's Club,

(C) SEMINOLE ENTERTAINMENT, INC. d/b/a Rachel's World Class Men's Club,
Defendants.

STATE'S MOTION TO COMPEL AND MOTION FOR SANCTIONS

COMES NOW, the State of Florida, by and through the undersigned designated Assistant Statewide Prosecutor, and moves this Honorable Court to compel witness Horace Grant to answer questions propounded to him at deposition and to assess costs or impose other sanctions and in support thereof would show the following:

1. On November 5, 2001, Horace Grant, a witness in the above-styled cause was served with a State subpoena requiring him to appear to give his deposition on November 8, 2001at 4:00 p.m. A copy of this subpoena is attached as Exhibit 1.

2. This date and time was coordinated with counsel of record as well as with James Russ, counsel for the witness. Undersigned counsel personally confirmed with counsel for the witness that his date and time was acceptable prior to issuing the subpoena and filing the deposition notice.

3. Counsel for the State and the Defendant each spent considerable time preparing for the deposition to ensure that the deposition could be conducted as expeditiously as possible.

4. Mr. Grant and Mr. Russ appeared at the Office of Statewide Prosecution at the time and date stated on the subpoena attached as Exhibit 1.

5. The witness refused to answer all substantive questions propounded to him by the State and the Defense other than his name and that he was represented by James Russ.

6. The witness's refusal was prompted by his counsel handing him a flash card from which Mr. Grant read "I respectfully decline to answer that question and assert my Constitutional privilege against self incrimination."

7. Counsel for the State explained to the witness that pursuant to F.S. 914.04 the subpoena served on the witness conferred use and derivative use immunity and therefore he could not legally decline to answer on the grounds that his answers might tend to incriminate him.

8. At the prompting of James Russ via the flash cards previously mentioned, the witness continued to refuse to answer even basic questions about the witness' knowledge of the matters surrounding this case.

9. The State and the Defense questions were each reasonably calculated to lead to admissible evidence and thus were appropriate questions to be asked of the witness.

10. Counsel for the witness' actions were such as to frustrate the ends of justice and have caused the State and the Defense to incur unnecessary costs in this case.

WHEREFORE the State of Florida moves this Honorable Court to enter its Order compelling the witness, Horace Grant, to answer questions propounded to him at a deposition in this cause and to assess costs against James Russ, counsel for the witness or against the witness, Horace Grant, or such other sanctions as the Court deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished to: Harrison T. Slaughter, Esq., Leventhal and Slaughter, P.A., Counsel for Paul James Veigle, 111 North Orange Avenue, Suite 700, Orlando, Florida 32801, Robert A. Leventhal, Esq., Leventhal and Slaughter, P.A., Counsel for Bee Line Entertainment, 111 North Orange Avenue, Suite 700, Orlando, Florida 32801, Victor L. Chapman, Esq., Barrett, Chapman and Ruta, P.A., Counsel for Seminole Entertainment, 18 Wall Street, Post Office Box 3826,Orlando, Florida 32802-3826, and James Russ, Esquire, 18 West Pine Street, Orlando, Florida 32801, this 9th day of November, 2001.

/s/ _____

Richard B. Bogle
Assistant Statewide Prosecutor
Florida Bar No.: 363731
135 West Central Boulevard
Suite 1000
Orlando, Florida 32801
(407) 245-0893

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Court Case No.:CRO1-4044

OSWP Case No. 2001-132-CFB

STATE OF FLORIDA
Plaintiff,

v.

(A) PAUL JAMES VEIGLE
a/k/a James Paul Veigle and Jim Veigle,

(B) BEE LINE ENTERTAINMENT PARTNERS, LTD. d/b/a Rachel's World Class Men's Club,

(C) SEMINOLE ENTERTAINMENT, INC. d/b/a Rachel's World Class Men's Club,
Defendants.

SUBPOENA FOR DEPOSITION

Greetings:

Horace Grant
161 Palmer Avenue
Winter Park, FL 32789

You are hereby commanded to appear before a person authorized by law to take depositions at the Office of Statewide Prosecution, 135 West Central Boulevard, Suite 1000, Orlando, Florida, on the 8th day of November, 2001 at 4:00 o'clock p.m. for the taking of your deposition in the above-styled criminal case.

This SUBPOENA is issued under the authority of the Circuit Court, at the request of the Office of Statewide Prosecution, by and through the undersigned prosecuting attorney. Failure to obey this Order may be punished as contempt of court.

Dated this 5th day of November, 2001

/s/ _____

Richard B. Bogle
Assistant Statewide Prosecutor
Florida Bar No.: 363731
135 West Central Boulevard
Suite 1000
Orlando, Florida 32801
(407) 245-0893

Personally served this 5 day of Nov. 2001.

By: /s/ _____

NOTE: In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the above-named Assistant Statewide Prosecutor at (407) 245-0893, no later than seven (7) days prior to the

proceeding. If hearing impaired, contact the above individual via the Florida Rely Service at 1-800-955-8771 (TDD) or 1-800-955-8770 (voice).

APPENDIX F

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Court Case No.:CRO1-4044

OSWP Case No. 2001-132-CFB

STATE OF FLORIDA
Plaintiff,

v.

(A) PAUL JAMES VEIGLE
a/k/a James Paul Veigle and Jim Veigle,

(B) BEE LINE ENTERTAINMENT PARTNERS, LTD. d/b/a Rachel's World Class Men's Club,

(C) SEMINOLE ENTERTAINMENT, INC. d/b/a Rachel's World Class Men's Club,
Defendants.

DEPOSITION OF:

HORACE GRANT,
ON BEHALF OF THE PLAINTIFF.

EXAMINATION OF A WITNESS BEGINNING AT 4:00 P.M. ON NOVEMBER 8, 2001, AT THE OFFICE OF STATEWIDE PROSECUTION, 135 WEST CENTRAL BOULEVARD, SUITE 1000, ORLANDO, FLORIDA, BEFORE JOYCE LANGE, PROFESSIONAL REPORTER, NOTARY PUBLIC, IN AND FOR THE STATE OF FLORIDA AT LARGE.

AMERICAN REPORTING
321 EAST LANE
SANFORD, FLORIDA 32771
(407) 324-4290

APPEARANCES

RICHARD B. BOGLE, ESQ., CHIEF ASSISTANT STATEWIDE PROSECUTOR, CENTRAL FLORIDA BUREAU, 135 W. CENTRAL BOULEVARD, SUITE 1000, ORLANDO, FLORIDA 32801; ON BEHALF OF THE PLAINTIFF.

ROBERT LEVENTHAL, ESQ. AND HARRISON T. SLAUGHTER, ESQ. OF: LEVENTHAL & SLAUGHTER, 111 NORTH ORANGE AVENUE, ORLANDO, FLORIDA 32801; ON BEHALF OF DEFENDANT PAUL JAMES VEIGLE.

JAMES M. RUSS, ESQ., OF: JAMES M. RUSS, P.A., 18 WEST PINE STREET, ORLANDO, FLORIDA 32801-2697; ON BEHALF OF HORACE GRANT.

ALSO PRESENT:

JACQUELINE H. DOWD, ASSISTANT ATTORNEY GENERAL, DIVISION OF ECONOMIC CRIMES.

KELLIE TOMEO, ASSISTANT STATEWIDE PROSECUTOR.

EXHIBITS

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[p. 4] HORACE GRANT,

Having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOGLE:

Q Would you tell us your name, please, sir.

MR. RUSS: Before we start, I'd like to put a couple of things on the record. First of all, I'd like to know who's -- my name is James Russ. I appear here as counsel for the witness, Horace Grant, with Mr. Grant. I'd like to know who the people are around the table.

MR. BOGLE: Mr. Russ, I'll take care of that --

MR. RUSS: Okay.

MR. BOGLE: -- okay?

BY MR. BOGLE:

Q Would you tell us your name, please sir.

MR. RUSS: I'd like to have that on the record before we start.

MR. BOGLE: Mr. Russ, now you're allowed to be here as long as you don't interfere with the

deposition. But you're not starting out on a good foot. Okay?

MR. RUSS: All right. Can I have the --

MR. BOGLE: I'm in control of this. Okay? You [p. 5] aren't.

MR. RUSS: All right. But I see Mr. Leventhal here. I see Mr. Slaughter here.

MR. BOGLE: I will put everyone's names on the record.

MR. RUSS: I see the agent, who I think is Winsett, or something like that. I see a statewide prosecutor, who I think name is Tomeo. And I don't know who the woman is at the end of the table.

MR. BOGLE: Okay. I will take care of this. Okay?

MR. RUSS: Before we start, I'd like to put on the record as Exhibit 1A the Notice of Deposition. I've got a copy for you, Mr. Bogle -

MR. BOGLE: That's okay. Thank you. I signed it.

MR. RUSS: -- and counsel. I'd like to also put on the record the --

(Whereupon, Witness Exhibit 1-A marked for identification.)

MR. RUSS: And then Witness 1B I have the subpoena, or a copy of the subpoena, that was served on Mr. Grant that I want to go into the record. A copy for counsel.

(Whereupon, Witness Exhibit I-B marked for [p. 6] identification.)

MR. BOGLE: And I will stipulate that I am the person who filed both of these. I signed the notice and the subpoena.

MR. RUSS: And, lastly, I have a Notice of Appearance, to round out the record my appearance as counsel for Mr. Grant.

(Whereupon, Witness Exhibit 1-B2 marked for identification.)

MR. RUSS: Okay. That being said, I won't press this matter about who's around the table, but you can proceed.

BY MR. BOGLE:

Q Would you tell us your name, please, Mr. Grant.

A Without waiving any of my legal privileges and rights, I shall answer that question as follows: My name is Horace Grant.

Q I'm Rick Bogle. I'm Assistant Statewide Prosecutor. To my right is Paul Winsett. He's an agent with the Metropolitan Bureau of Investigation. To his right is Kellie Tomeo. She's an Assistant Statewide Prosecutor. At the end of the table is Jacqueline Dowd. She's an Assistant Attorney General.

In the far corner down here is Robert Leventhal. Next to him is Harrison Slaughter. They're the attorneys [p. 7] that represent Beeline Entertainment and Mr. Veigle, Paul James Veigle, I think is the way it's styled.

And you're here represented by Mr. Russ as your attorney. Is that correct?

A Without waiving any of my legal privileges and rights, I shall answer that question as follows: Yes.

Q Mr. Grant, I will stipulate that that statement that you just read precedes every answer that you give here today. Okay?

MR. BOGLE: Does that satisfy you, Mr. Russ?

MR. RUSS: Yes, it does.

BY MR. BOGLE:

Q You're represented here by Mr. Russ; is that correct?

Mr. Grant, I've stipulated that -- you don't have to read it every time. Okay? Is that all right?

A Yes.

Q So he's your attorney, correct?

A Yes.

Q We want to talk today about your activities and times you've been to Rachel's Men's Club. Okay?

A Yes.

Q Is that okay? All right. Now, I don't want to cause you an embarrassment. I don't want to cause any problems. I don't want to turn this into the Gold Club [p. 8] trial. We just want to ask you direct questions, and we'd appreciate it if you would just give direct answers and we can get out of here at a decent hour. Okay? Sound fair?

A Sounds fair.

Q Let's talk about the first time you ever went into Rachel's Men's Club and tell me which one it would be.

[p. 8] A I respectfully decline to answer that question and assert my constitutional privilege against self-incrimination.

Q Okay. Sir, you have received -- you have received what Mr. Russ has put into the record as Exhibit 1-B. It's a subpoena for deposition issued by the State of Florida. Pursuant to Florida Statute 914.04, you have what is called use immunity. That means that nothing you say here can be used against you. Nothing derived from what you say here today can be used against you.

And pursuant to Florida Statute 914.04, you cannot refuse to answer a question propounded by me to you because of your Fifth Amendment rights. Okay? You can be held in contempt of court for refusal to answer questions. You're a witness here today.

I understand you are represented by a fine attorney, and I have no objection to him giving you legal advice. But you need to understand that you'll be the [p. 9] person to be held in contempt -- or that I would request be held in contempt if you refuse to answer questions.

Now, this use immunity means that if I ask you a question and you give me an answer to it that somehow incriminates you, that were you to ever be charged with a crime, my question and your answer could not be introduced in the trial and, further, nothing derived from that could be introduced in your trial. It couldn't be used by law enforcement. It couldn't be used by the prosecutor. In no way can it be used against you.

So if I ask you hypothetically a question about a gun that was used in a crime, and you say, well, yeah, it's buried in my back yard, I can't go to your house and dig it up. I can't look for the fingerprints on it. You know, I can't use that against you in any way.

Now, if there was another witness somewhere else who said the gun was buried there, then we could go dig it up, maybe, maybe, if we got a search warrant and all based on the testimony of the other witness. But in no way can what you say be used against you.

Does that make sense?

A I respectfully decline to answer that question and assert my constitutional privilege against self-incrimination.

MR. BOGLE: Well, Mr. Russ, you know, I've got [p. 10] to point out here that you're not on sound ground. 914.04 says he has use immunity. And you can't hand him a card that says to take the Fifth Amendment. The attorney who instructs his witness, his client, to refuse to answer a question can personally be held liable for the court costs and the costs of these attorneys coming in.

So I'd be interested in your legal grounds, sir.

MR. RUSS: I'm not here to discuss the law with you, Mr. Bogle. I'm here to represent Mr. Grant in this deposition.

BY MR. BOGLE:

Q Mr. Grant, when was the first time you went to Rachel's Men's Club either in Casselberry or in Orlando?

A I respectfully decline to answer that question and assert my constitutional privilege against self-incrimination.

Q Who did you deal with when you went to Rachel's Men's Club?

A I respectfully decline to answer that question and assert my constitutional privilege against self-incrimination.

Q Have you ever met James Veigle?

A I respectfully decline to answer that question and assert my constitutional privilege against self-[p. 11] incrimination.

Q Would you please tell us all information you have about any criminal conduct that has ever occurred in Rachel's Men's Club.

A I respectfully decline to answer that question and assert my constitutional privilege against self-incrimination.

Q Mr. Grant, is it safe to assume that your answer to every question I propound to you today will be the same?

A I don't know.

MR. BOGLE: I have been in many depositions where the attorneys feel compelled to ask every single question so that they can go to the judge and have every single question directly responded to by the judge and have you ordered to answer every question. I personally have never felt that's necessary when it is so clear that an attorney is attempting to frustrate the ends of justice such as Mr. Russ is here today, that I do not feel that it is necessary to go through every single question.

I think it's clear to me, it's clear to everyone in this room and you aren't going to answer any other questions. So I think we've gone far enough. I'll be filing a motion to compel, and I will ask that Mr. [p. 12] Russ personally -- not you, Mr. Grant -- but I will be asking that Mr. Russ personally have to pay for the cost of the court reporter and the cost of the other individuals who are here today.

So with that, I leave it to the defense if they would like to ask any questions.

CROSS-EXAMINATION

BY MR. SLAUGHTER:

Q I have one question. Mr. Grant --

MR. RUSS: Mr. Slaughter, who are you counsel for?

MR. SLAUGHTER: Jim Russ -- James Veigle.

BY MR. SLAUGHTER:

Q I have one question. Can you tell us about all the things that happened in Rachel's North and Rachel's South that are not illegal.

A I respectfully decline to answer that question and assert my constitutional privilege against self-incrimination.

MR. SLAUGHTER: I have no questions. Based on the state of the record, no more questions.

MR. LEVENTHAL: Based on the state of the record, I'm not going to pose any questions to Mr. Grant at this time.

MR. BOGLE: Mr. Grant, you have the right to [p. 13] read this deposition to make sure the court reporter has taken everything down correctly that's been said here today. You can't change anything, but there will be an errata sheet on the back that you can make corrections and say at this particular place I said green and the court reporter typed red.

Would you like to read or would you like to waive that right?

MR. RUSS: He'll read it.

MR. BOGLE: Would you please give a phone number to the court reporter that you can be reached.

MR. RUSS: He can be reached through his lawyer at 407-849-6050.

MR. BOGLE: This will conclude the deposition.

(Deposition concluded at 4:07 p.m.)

[p. 14] CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF OSCEOLA

I, THE UNDERSIGNED AUTHORITY, CERTIFY THAT HORACE GRANT PERSONALLY APPEARED BEFORE ME ON NOVEMBER 8, 2001.

WITNESS MY HAND AND OFFICIAL SEAL THIS 19 DAY OF NOVEMBER 2001.

/s/ _____
JOYCE LANGE
NOTARY PUBLIC - STATE OF FLORIDA
MY COMMISSION NO. CC842526
EXPIRES: AUGUST 11, 2003

STATE OF FLORIDA
COUNTY OF OSCEOLA

I, JOYCE LANGE, PROFESSIONAL REPORTER, CERTIFY THAT I WAS AUTHORIZED TO AND DID REPORT BY STENOMASK THE FOREGOING DEPOSITION, AND THAT THE TRANSCRIPT IS A TRUE RECORD OF THE TESTIMONY GIVEN BY THE WITNESS.

I FURTHER CERTIFY THAT I AM NOT A RELATIVE, EMPLOYEE, ATTORNEY OR COUNSEL OF ANY OF THE PARTIES, NOR AM I A RELATIVE OR EMPLOYEE OF ANY OF THE PARTIES' ATTORNEY OR COUNSEL CONNECTED WITH THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

DATED THIS 19 DAY OF NOVEMBER 2001.

/s/ _____
JOYCE LANGE, PR
NOTARY PUBLIC - STATE OF FLORIDA
MY COMMISSION NO. CC842526
EXPIRES: AUGUST 11, 2003

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Court Case No.:CRO1-4044

OSWP Case No. 2001-132-CFB

EXHIBIT 1-A

STATE OF FLORIDA)
Plaintiff,)
)
v.)
)
(A) PAUL JAMES VEIGLE)
a/k/a James Paul Veigle and Jim Veigle,)
)
(B) BEE LINE ENTERTAINMENT)
PARTNERS, LTD. d/b/a Rachel's World Class)
Men's Club,)
)
(C) SEMINOLE ENTERTAINMENT, INC.)
d/b/a Rachel's World Class Men's Club,)
Defendants.)
)

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that the State will take the deposition(s) of:

Horace Grant
161 Palmer Avenue
Winter Park, FL 32789

on the 8th day of November, 2001, at 4:00 p.m., at the office of Statewide Prosecution, 135 West Central Boulevard, Suite 1000, Orlando, Florida, before the American Court Reporting, 1416 Cypress Grove Road, Orlando, Florida, or any other court reporter, notary public, or officer authorized by law to take depositions. This deposition is being taken for the purpose of discovery, for use at trial, and for such other purposes as are permitted under applicable statutes and rules. The deposition shall continue from day to day until completed.

CERTIFICATE OF GOOD FAITH IN SCHEDULING AND SERVICE

I HEREBY CERTIFY that a good faith effort has been made and continues to be made in coordinating the date, time, location of the deposition and schedules of all parties and the witness to be deposed and that a true and correct copy of the foregoing was furnished to Robert Leventhal, Esquire, 111 North Orange Avenue, Suite 700, Orlando, Florida, 32801; Harrison Slaughter, Esquire, 111 North Orange Avenue, Suite 700, Orlando, Florida 32801; and Victor Chapman, Esquire, 18 Wall Street, Orlando, Florida 32801, on this 5th day of November, 2001.

/s/ _____

RICHARD B. BOGLE
Assistant Statewide Prosecutor
Florida Bar Number 363731
135 West Central Boulevard
Suite 1000
Orlando, Florida 32801
(407) 245-0893

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Court Case No.:CRO1-4044

OSWP Case No. 2001-132-CFB

EXHIBIT 1-B

STATE OF FLORIDA
Plaintiff,

v.

(A) PAUL JAMES VEIGLE
a/k/a James Paul Veigle and Jim Veigle,

(B) BEE LINE ENTERTAINMENT PARTNERS, LTD. d/b/a Rachel's World Class Men's Club,

(C) SEMINOLE ENTERTAINMENT, INC. d/b/a Rachel's World Class Men's Club,
Defendants.

SUBPOENA FOR DEPOSITION

Greetings:

Horace Grant
161 Palmer Avenue
Winter Park, FL 32789

You are hereby commanded to appear before a person authorized by law to take depositions at the Office of Statewide Prosecution, 135 West Central Boulevard, Suite 1000, Orlando, Florida, on the 8th day of November, 2001 at 4:00 o'clock p.m. for the taking of your deposition in the above-styled criminal case.

This SUBPOENA is issued under the authority of the Circuit Court, at the request of the Office of Statewide Prosecution, by and through the undersigned prosecuting attorney. Failure to obey this Order may be punished as contempt of court.

Dated this 5th day of November, 2001

/s/ _____
RICHARD B. BOGLE
Assistant Statewide Prosecutor
Florida Bar Number 363731
135 West Central Boulevard
Suite 1000
Orlando, Florida 32801
(407) 245-0893

Personally served this 5 day of Nov. 2001.

By: /s/ _____

NOTE: In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the above-named Assistant Statewide Prosecutor at (407) 245-0893, no later than seven (7) days prior to the proceeding. If hearing impaired, contact the above individual

via the Florida Rely Service at 1-800-955-8771 (TDD) or 1-800-955-8770 (voice).

Deposition of Horace Grant, with exhibits - 11/8/01

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Court Case No.:CRO1-4044

OSWP Case No. 2001-132-CFB

EXHIBIT 2

STATE OF FLORIDA Plaintiff,	)
v.	)
(A) PAUL JAMES VEIGLE a/k/a James Paul Veigle and Jim Veigle,	)
(B) BEE LINE ENTERTAINMENT PARTNERS, LTD. d/b/a Rachel's World Class Men's Club,	)
(C) SEMINOLE ENTERTAINMENT, INC. d/b/a Rachel's World Class Men's Club, Defendants.	)

NOTICE OF APPEARANCE OF COUNSEL

TO: Office of Statewide Prosecution
135 West Central Boulevard, Suite 1000
Orlando, Florida 32801

You are hereby notified that LAW OFFICES OF JAMES M. RUSS, P.A., Tinker Building, 18 West Pine Street, Orlando, Florida 32801, telephone 407-849-6050, is legal counsel for the Witness, HORACE GRANT, in connection with MR. GRANT'S appearance on November 8, 2001, in compliance with said WITNESS SUBPOENA.

I HEREBY CERTIFY that on this 8th day of November, 2001, at or about 4:00 p.m., a true copy of the foregoing has been furnished by hand to a representative of the OFFICE OF STATEWIDE PROSECUTION, 135 West Central Boulevard, Suite 1000, Orlando, Florida 32801; and to all counsel of record present at the commencement of the deposition; and the original has been filed with the CLERK OF COURT, Ninth Judicial Circuit of Florida, 425 North Orange Avenue, Orlando, Florida 32801.

LAW OFFICES OF JAMES M. RUSS, P.A.
Tinker Building
18 West Pine Street
Orlando, Florida 32801
407-849-6050
407-849-6059 (FAX)

/s/ _____
JAMES M. RUSS
Florida Bar No. 069585

ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT --
ENTER CHANGES HERE

IN RE: (Type case style)

Page No.	Line No.	Change	Reason
6	8	change "1-B2" to "2"	clerical error

Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

November 28, 2001 Horace Grant
(Type Name of Deponent)

/s/ _____

APPENDIX G

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Court Case No.:CRO1-4044

Division 12

OSWP Case No.: 2001-132-CFB

[Filed March 23, 2001]

STATE OF FLORIDA
Plaintiff,

v.

(A) PAUL JAMES VEIGLE
a/k/a James Paul Veigle and Jim Veigle,

(B) BEE LINE ENTERTAINMENT PARTNERS, LTD. d/b/a Rachel's World Class Men's Club,

(C) SEMINOLE ENTERTAINMENT, INC. d/b/a Rachel's World Class Men's Club,
Defendants.

Excerpt from Criminal Information - 3/23/01

INFORMATION FOR:

COUNT I: RACKETEERING
F.S. 895.03(3)
F-1
(All defendants)

COUNT2: CONSPIRACY TO COMMIT RACKETEERING
F.S. 895.03(4)
F-1
(All defendants)

COUNT 3: DERIVING SUPPORT FROM PROSTITUTION
F.S. 796.05
F-3
(All defendants)

COUNT4: SECURING A PERSON FOR PROSTITUTION
F.S. 796.07
M-2
(All defendants)

COUNT 5: MONEY LAUNDERING
F.S. 896.101(2)(a)(1999)
F-2
(All defendants)

COUNT 6: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
(All defendants)

COUNT 7: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
F-2
(All defendants)

COUNT 8: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
F-2
(All defendants)

COUNT 9: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
F-2
(All defendants)

COUNT 10: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
F-2
(All defendants)

COUNT 11: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
F-2
(All defendants)

COUNT 12: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
F-2
(All defendants)

COUNT 13: MONEY LAUNDERING
F.S. 896.101(2)(c)(1999)
F-2
(All defendants)

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

COUNT 1

MELANIE ANN HINES, Statewide Prosecutor for the State of Florida, by and through the undersigned Designated Assistant Statewide Prosecutor, under oath charges that between on or about October 1,1998, and on or about July 20, 2000, in the Ninth and Eighteenth Judicial Circuits, to-wit: Orange and Seminole Counties, Florida, PAUL JAMES VEIGLE a/k/a James Paul Veigle and Jim Veigle; BEE LINE ENTERTAINMENT PARTNERS, LTD., d/b/a Rachel's World Class Men's Club; AND SEMINOLE ENTERTAINMENT, INC., d/b/a Rachel's World Class Men's Club, did, while employed by or associated with an enterprise as defined in Florida Statutes 895.02(3), to-wit: the businesses, partnerships or corporations operating under the names of: Bee Line Entertainment Partners, Ltd., Bee Line Entertainment, Inc., Seminole Entertainment, Inc., Premier Entertainment of Central Florida, Inc., Rachel's World Class Men's Club, and Rachel's Steakhouse; and Others known and unknown, and a group of individuals associated in fact although not a legal entity including Francis P. Otero, Robert J. Rexroad, Darin Gene Terry, Monte Jay Summers, Sean Amory Smith, Carlos Jose Sanchez, James William Mulrenin a/k/a. G.Q., Lee Samuel Gordon, Teresa Longo, Tom Kitchen, Christopher Martin, Ronald Richards, Rebecca

Schmitzer, Robert Szuchon, Vikki Vellucci, Breanne Watkins, Roger Craig Webb, Jennifer Lethig, Jessica Yurt, April Brown, Michelle Crofut, Maria Diaz, Julia Haire, Sophia Impellitteri, Michelle McComish, Izzak Patten, Kathleen Petix, Sherry Allen, Jan Royce, Bradley Jason Rarick, Melanie Fazeel-Bermann, Brian Bittle, Jay Glen Lewis, Tamara Otero, Michael Coates, Todd Bulloch, Ed Quinn, Rodney Metz, John Day, Anne Stevenson, Daniel C. Beers, and others either known or unknown, did conduct or participate, directly or indirectly, in the affairs of said enterprise through a continuous pattern of racketeering activity as defined by Florida Statute 895.02(4) by engaging in at least two incidents of racketeering activity which had similar intents, results, accomplices, victims, or methods of commission or were otherwise interrelated by distinguishing characteristics and were not isolated incidents, including at least two of the following, all in violation of Florida Statutes 895.03(3):

Predicate Incident I

Between on or about October 1,1998 and on or about December 31,1998, in the Eighteenth Judicial Circuit, to-wit: Seminole County, PAUL JAMES VEIGLE a/k/a James Paul Veigle and Jim Veigle; BEE LINE ENTERTAINMENT PARTNERS, LTD., d/b/a Rachel's World Class Men's Club; AND SEMINOLE ENTERTAINMENT, INC:, d/b/a Rachel's World Class Men's Club, did offer, or offer or agree to secure, another, to-wit: Jennifer Lethig, for the purpose of prostitution with Angelo Morini, or did aid, abet or participate therein, in violation of Florida Statute 796.07,

OR

Excerpt from Criminal Information - 3/23/01

Predicate Incident 5

Between on or about November 1, 1999, and on or about February 29, 2000, in the Ninth Judicial Circuit, to-wit: Orange County, PAUL JAMES VEIGLE a/k/a James Paul Veigle and Jim Veigle; BEE LINE ENTERTAINMENT PARTNERS, LTD., d/b/a Rachel's World Class Men's Club; AND SEMINOLE ENTERTAINMENT, INC., d/b/a Rachel's World Class Men's Club, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, to-wit: violation of Florida Statute 796.07, did conduct or attempt to conduct such a financial transaction, which in fact involved the proceeds of unlawful activity with the intent to promote the carrying on of specified unlawful activity or knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, in violation of Florida Statute 896.101(2)(a)(1999).

Predicate Incident 6

Between on or about January 1, 2000 and on or about June 1, 2000, in the Eighteenth Judicial Circuit, to-wit: Seminole County, PAUL JAMES VEIGLE a/k/a James Paul Veigle and Jim Veigle; BEE LINE ENTERTAINMENT PARTNERS, LTD., d/b/a Rachel's World Class Men's Club; AND SEMINOLE ENTERTAINMENT, INC., d/b/a Rachel's World Class Men's Club, did solicit, induce, entice, or procure another, to-wit: Laura Kollar, to commit prostitution with Horace Grant, or did aid, abet or participate therein, in violation of Florida Statute 796.07,

OR

Between on or about January 1, 2000 and on or about June 1, 2000, in the Eighteenth Judicial Circuit, to-wit: Seminole County, PAUL JAMES VEIGLE a/k/a James Paul Veigle and Jim Veigle; BEE LINE ENTERTAINMENT PARTNERS, LTD., d/b/a Rachel's World Class Men's Club; AND SEMINOLE ENTERTAINMENT, INC., d/b/a Rachel's World Class Men's Club, did with reasonable belief or knowing another person, to-wit: Laura Kollar, is engaged in prostitution, live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of said Laura Kollar's prostitution with Horace Grant, in violation of Florida Statute 796.05.